THE NEW LAW OF PROPERTY EXPLAINED

BY

SIR LESLIE SCOTT, K.C., M.P.

Digitized by the Internet Archive
in 2025

https://archive.org/details/newlawofproperty0000sirl

WITHDRAWN STOCK
MIDDLE TEMPLE LIBRARY

THE NEW LAW OF PROPERTY EXPLAINED

BY

SIR LESLIE SCOTT, K.C., M.P.

WITH ANNOTATIONS

BY

BERTRAM B. BENAS

LONDON:
SWEET & MAXWELL, LIMITED,
2 & 3 CHANCERY LANE, W.C.2.
1925.
(Printed in England.)

a11153
B.298

THE NEW LAW OF PROPERTY ACTS EXPLAINED

BY

SIR LESLIE SCOTT, K.C., M.P.

BEING

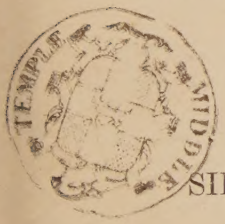
The Speech by the Solicitor-General (Sir Leslie Scott) on Moving the Second Reading of the Law of Property Bill, 1922.

ARRANGED AND ANNOTATED

BY

BERTRAM B. BENAS, B.A., LL.B.,

Of the Middle Temple and the Northern Circuit, Barrister-at-Law, Joint Author of Benas and Essenhigh's "Precedents of Pleading."



WITH A FOREWORD

BY

SIR LESLIE SCOTT, K.C., M.P.

LONDON:

SWEET & MAXWELL, LIMITED,

2 & 3 CHANCERY LANE, W.C. 2.

1925.

(Printed in England.)

PRINTED IN GREAT BRITAIN BY
THE EASTERN PRESS, LTD., READING.

PUBLISHERS' NOTE.

Mr. J. M. Lightwood in "A Conveyancer's Letter" in the Law Journal, April 25, 1925, observed that perhaps the most luminous account of the changes which the new legislation dealing with the Law of Property effects was contained in the speech delivered by Sir Leslie Scott, K.C., M.P., then Solicitor-General, on moving the second reading of the Law of Property Bill in the House of Commons on May 15, 1922. It was not to be supposed that many readers would go to Hansard for it, yet commentators of the new legislation would do well to peruse it.

In order to secure its wider circulation the present publication has been issued. The speech has been annotated to date by Mr. Bertram B. Benas, B.A., LL.B., of the Chancery Bar. No attempt has been made to expand the statement into a complete epitome of the new enactments, since the book is published not with a view of giving a short cut to the new legislation but for the purpose of providing an explanatory introduction to the principles upon which that legislation is based. The practitioner and the student will find that the illuminating exposition of Sir Leslie Scott, which the speech affords as an introduction to the new Law of Property, will encourage and facilitate the study of the enactments themselves and the new volumes of Conveyancing Precedents about to be issued.

FOREWORD.

The first of January, 1926, will bring into operation the largest Law Reform that the Parliament of this—and probably of any—country has ever achieved in one single Statute. The Bill of 1922 which effected it contained about 300 pages and eleven separate parts, each dealing with a separate branch of the law of Real Property, Conveyancing or Registration.

To-day the Act of 1922[1] has been repealed, split up into component parts, amended, and finally consolidated with a number of enactments already on the statute book, so that we have a series of Acts dealing each with its own department of the law. The result is a great reform; but it is a truly terrifying mass of legislation—whether for layman or lawyer, student or Lord Justice; and without an explanatory guide to the labyrinth the steps of the most intrepid may well falter. Mr. Benas has honoured me with the suggestion that the speech with which, as Solicitor-General, I moved the Second Reading of the Bill in 1922 might, if republished, serve the needs of those who want a short exposition of the main objects and results of the new legislation; and if annotated with references to the relevant sections of the new Acts and to the decided cases affected by them, might even be of use to the lawyer who wants to see how the main changes have been effected.

[1] Save as to the parts relating to Enfranchisement, Extinguishment of Manorial Incidents and Conversion of perpetually renewable Leaseholds into Long Terms.

I trust that my speech may serve the former purpose; I feel sure that Mr. Benas' contributions in this small book will achieve the latter. The footnotes which he has attached show at a glance where the main principles of the legislation, as described in the speech, may be found in the various statutes which now embody the law. His table of arrangement affords in tabular form a clear index to all the main heads of the consolidated enactments. His list of cases affected by the new legislation enables the practitioner at once to put his finger on the principal changes in our Case Law which have resulted from the activities of Parliament.

This vast monument of human energy has been, of course, built by the hands of many builders. More than half a century of law reformers have contributed to it. It was at the end of 1918 when, as Chairman of the Land Acquisition Committee, I was brought face to face with the expenses and delays of land transfer in England as compared with newer countries that I was impressed with the need of including in the programme of post-war reconstruction a drastic revision of our methods of land transfer. After careful consideration I expressed to Mr. Lloyd George, then Prime Minister, my belief that if my Committee were assisted by the addition of carefully chosen and representative members from outside its ranks, there was a reasonable chance of our agreeing on some satisfactory solution. He fell in with my proposal, and the Committee was asked to advise "what action should be taken to facilitate and cheapen the transfer of land." The work that had been already done by many zealous reformers, and particularly by Lord Haldane, Sir Philip Gregory, Sir Arthur Underhill and many others and by

the Royal Commission on Land Transfer, was brought under review. Sir Benjamin Cherry assisted us throughout our investigation. In the result we came unanimously to the conclusion that—

> "the existing law of real property is archaic and unnecessarily complicated, that no great improvement in the existing systems of transfer of land, whether registered or unregistered, can be effected until the law of real property has been radically simplified."

But we felt it was impossible to repeal the whole of the existing law of real property and to impose a new code, and therefore recommended that the proposal of Sir Arthur Underhill to assimilate the law of real property to that of personal property should be adopted ; and at our request Sir Benjamin Cherry recast and amended a series of Bills, already in draft, and put them all into one Bill.

I have myself always considered that the system of transfer by registration of title is right and that conveyancing, as we know it, is unnecessarily complicated. But it was plain in 1919 that it was not practical politics to attempt an immediate extension of compulsory registration of title under the Land Transfer Act, 1897, that success would attend our efforts only if (1) the substantive law of real property were reformed, (2) conveyancing were simplified, (3) the Land Transfer Acts were amended ; and finally (4) if the two rival systems, of private conveyancing and registration, each being improved as at far as possible, were allowed to work side by side for a period of time, so that the public might have an opportunity of observing their comparative advantages and dis-

advantages in equal competition. On these lines the Committee made in 1919 a unanimous report to Lord Birkenhead, then Lord Chancellor, recommending the adoption of Sir Benjamin Cherry's Bill. Lord Birkenhead obtained the approval of the Cabinet and introduced the Bill, in the form submitted by the Committee, in the House of Lords in 1920.

The subsequent history of this great reform and of the debt which the country owes to Lord Birkenhead for steering so difficult a craft through such troubled waters, until he brought it successfully into port, are well known. Certain amendments of the original bill were accepted by him, in order to win general support to the measure ; perhaps the chief one being that no attempt to extend compulsory registration of title beyond the London area (where it is already compulsory) should be made for ten years. The result is that during that time the two systems will be on trial one against the other. By 1936 the public, lay and professional, will probably have made up its mind. I hope the opinions of both will be in favour of registration of title, as the simplest, cheapest and most convenient method for dealings in land. My common law instincts may be misleading me, but if I were a betting man I should be prepared to lay odds in favour of registration having won first place by that date. In the meantime I hope Mr. Benas' little book may be of some use to those who want to know either the broad purport of the new law or where to find its detailed provisions.

LESLIE SCOTT.

TABLE OF THE ARRANGEMENT OF THE NEW LAW OF PROPERTY LEGISLATION.

Certain portions of the Law of Property Act, 1922 (as amended by the Law of Property Amendment Act, 1924), and of the Law of Property Amendment Act, 1924, are still operative. For the repeals effected by the new legislation see the schedules to the Law of Property Amendment Act, 1924, and the Settled Land Act, 1925, the Trustee Act, 1925, the Law of Property Act, 1925, the Land Registration Act, 1925, the Land Charges Act, 1925, the Administration of Estates Act, 1925, and the Universities and College Estates Act, 1925, as previously specified.

Law of Property Act, 1925.

Part 1, ss. 1—39	...	General principles as to legal estates, equitable interests and powers.
Part 2, ss. 40—84	...	Contracts, conveyances and other instruments.
Part 3, ss. 85—129	...	Mortgages, rent charges and powers of attorney.
Part 4, ss. 130—138	...	Equitable interests and things in action.
Part 5, ss. 139—154	...	Leases and tenancies.
Part 6, ss. 155—160	...	Powers.
Part 7, ss. 161—166	...	Perpetuities and accumulations.
Part 8, ss. 167—171	...	Married women and lunatics.
Part 9, ss. 172—174	...	Voidable dispositions.
Part 10, ss. 175—179	...	Wills.
Part 11, ss. 180—200	...	Miscellaneous.
Part 12, ss. 201—209	...	Construction, jurisdiction, and general provisions.
Schedules	...	1. Transitional provisions.
		2. Implied covenants.
		3. Forms of transfer and discharge of mortgages.
		4. Forms relating to statutory charges or mortgages of freehold or leasehold land.
		5. Forms of instruments.
		6. Epitomes of abstracts of title.
		7. Enactments repealed.

Land Charges Act, 1925.

S. 1	...	Preliminary.
Part 1, ss. 2—3	...	Pending actions.
Part 2, ss. 4—5	...	Annuities.
Part 3, ss. 6—7	...	Writs and orders affecting land.
Part 4, ss. 8—9	...	Deeds of arrangement.
Part 5, ss. 10—14	...	Land charges.
Part 6, s. 15	...	Local land charges.
Part 7, ss. 16—17	...	Searches.
Part 8, ss. 18—26	...	General.
Schedule	...	Repeals.

Settled Land Act, 1925.

Part 1, ss. 1—37	...	General preliminary provisions.
Part 2, ss. 38—72	...	Powers of a tenant for life.
Part 3, ss. 73—82	...	Investment or other application of capital money.
Part 4, ss. 83—89	...	Improvements.
Part 5, ss. 90—93	...	Miscellaneous provisions.
Part 6, ss. 94—102	...	General provisions as to trustees.
Part 7, ss. 103—112	...	Restrictions, savings and protection of purchasers.
Part 8, ss. 113—116	...	Court, Ministry of Agriculture and Fisheries, procedure.
Part 9, ss. 117—120	...	Supplementary provisions.
Schedules	...	1. Forms of instruments.
		2. Transitional provisions affecting existing settlements.
		3. Improvements.
		4. Retrospective amendments of the Settled Land Acts, 1882-1890.
		5. Enactments repealed.

Trustee Act, 1925.

Part 1, ss. 1—11	...	Investments.
Part 2, ss. 12—33	...	General powers of trustees and personal representatives.
Part 3, ss. 34—40	...	Appointments and discharge of trustees.
Part 4, ss. 41—63	...	Powers of the Court.
Part 5, ss. 64—71	...	General provisions.
Schedules	...	1. Retrospective amendments.
		2. Enactments repealed.

Administration of Estates Act, 1925.

Part 1, ss. 1—3	...	Devolution of real estate.
Part 2, ss. 4—31	...	Executors and administrators.
Part 3, ss. 32—44	...	Administration of assets.
Part 4, ss. 45—52	...	Distribution of residuary estate.
Part 5, ss. 53—58	...	Supplemental.
Schedules	...	1. Rules as to payment of debts out of insolvent estates and order of application of assets in solvent estates.
		2. Repeals.

Land Registration Act, 1925.

Part 1, ss. 1—3	...	Preliminary.
Part 2, ss. 4—17	...	Registration of land.
Part 3, ss. 18—47	...	Registered dealings with registered land.
Part 4, ss. 48—62	...	Notices, cautions, inhibitions and restrictions.
Part 5, ss. 63—68	...	Land and charge certificates.
Part 6, ss. 69—81	...	General provisions as to registration and the effect thereof.
Part 7, ss. 82—85	...	Rectification of register and indemnity.
Part 8, ss. 86—100	...	Application to particular classes of land.
Part 9, ss. 101—109	...	Unregistered dealings with registered land.
Part 10, ss. 110—119	...	Miscellaneous provisions.
Part 11, ss. 120—125	...	Compulsory registration.
Part 12, ss. 126—143	...	Administrative and judicial provisions.
Part 13, ss. 144—148	...	Rules, fee orders, regulations, short title, commencement and extent.
Schedule	...	Repeals.

Universities and College Estates Act, 1925.

S. 1	...	Universities and Colleges to which the Act applies.
Ss. 2—5	...	Sale and exchange.
Ss. 6—12	...	Leasing powers.
S. 13	...	Surrenders and regrants.

Universities and College Estates Act, 1925—*continued.*

Ss. 14—25	... ...	Miscellaneous powers.
Ss. 26—29	... ...	Investment or other applications of capital money.
Ss. 30—32	... ...	Powers of raising money.
Ss. 33—37	... ...	Special provisions as to advowsons, etc.
Ss. 38—39	... ...	Provisions as to the Minister.
Ss. 40—45	... ...	Supplemental provisions.
	Schedules ...	1. Improvements.
		2 Repeals.

AN INDEX UNDER ONE CHRONOLOGICAL LIST TO THE PRINCIPAL ACTS AFFECTED BY THE NEW LEGISLATION.

ABBREVIATIONS.

L.P.A. 1922—Law of Property Act, 1922.
L.P.A.A. 1924—Law of Property (Amendment) Act, 1924.
L.P.A. 1925—Law of Property Act, 1925.
A.E.A. 1925—Administration of Estates Act, 1925.
L.C.A. 1925—Land Charges Act, 1925.
L.R.A. 1925—Land Registration Act, 1925.
S.L.A. 1925—Settled Land Act, 1925
T.A. 1925—Trustee Act, 1925.

NOTE.—*Schedule I. of the Law of Property (Amendment) Act*, 1924, *contains the repeals effected by the Law of Property Act of* 1922.

A.D.				
1285	13 Ed. I.	c. 19		A.E.A. 1925
		c. 23		A.E.A. 1925
		c. 34		A.E.A. 1925
1297	25	c. 7		A.E.A. 1925
		c. 18		A.E.A. 1925
	Uncertain ...	... ...	Tenant by curtesy	A.E.A. 1925
	,, ...	... ...	Customs of Glos. and Kent ...	A.E.A. 1925
1330	4 Edw. III.	c. 7		A.E.A. 1925
1351–2	25	st. 5, c. 5		A.E.A. 1925
1357	31	st. 1, c. 11		A.E.A. 1925
1529	21 Hen. VIII.	c. 4 ...	Executors ...	A.E.A. 1925
		c. 5 ...	Probates ...	A.E.A. 1925
1535–6	27	c. 10 ...	Uses	L.P.A. 1925
		c. 16		L.P.A.A. 1924
1539	31	c. 1		L.P.A.A. 1924
1540	32	c. 28		L.P.A.A. 1924
		c. 32		L.P.A.A. 1924
		c. 34 ...	Grants of reversions ...	L.P.A. 1925
		c. 37		A.E.A. 1925
1542–3	34 & 35	c. 20		L.P.A.A. 1924

A.D.			
1547	1 Edw. VI. c. 12		A.E.A. 1925
1551–2	5 & 6 c. 11		A.E.A. 1925
	c. 12		A.E.A. 1925
1562–3	5 Eliz. c. 26		L.P.A.A. 1924
1571	13 c. 4		L.P.A.A. 1924
	c. 5 ... ... Fraudulent deeds ...		L.P.A. 1925
1575–6	18 c. 6 ... ... Universities ...		Universities and College Estates Act, 1925
1584–5	27 c. 3		L.P.A.A. 1924
	c. 4 ... ... Fraudulent conveyances		L.P.A. 1925
1601	43 c. 8		A.E.A. 1925
1660	12 Car. II. c. 24		A.E.A. 1925
1670–1	22 & 23 c. 10 ... Distribution ...		A.E.A. 1925
1677	29 c. 3 ... Frauds ...		L.P.A. 1925 A.E.A. 1925
1678	30 c. 7		A.E.A. 1925
1685	1 Jac. II. c. 17		A.E.A. 1925
1692	4 W. & M. c. 16 ... Clandestine mortgages		L.P.A. 1925
	c. 24		A.E.A. 1925
1698	10 Will. III. c. 22		L.P.A.A. 1924
1705	4 & 5 Anne, c. 3		L.P.A.A. 1924 L.P.A. 1925
1711	10 c. 28 ... Pleading ...		L.P.A.A. 1924
1713	13 c. 6		L.P.A.A. 1924
1730	4 Geo. II. c. 28 ... Landlord and tenant ...		L.P.A. 1925
1737	11 c. 19 ... Distress ...		L.P.A. 1925
1751	25 c. 39 ... British subjects		L.P.A.A. 1924
1798	38 Geo. III. c. 87 ... Administration		A.E.A. 1925
1800	39 & 40 c. 98 ... Accumulations		L.P.A. 1925
1830	11 Geo. IV. & 1 Will. IV. c. 40 ... Executors ...		A.E.A. 1925
	c. 46 ... Illusory appointments ...		L.P.A. 1925
	c. 47 ... Debts recovery		A.E.A. 1925 L.P.A. 1925
	c. 65 ... Infants' Property		L.P.A.A. 1924
1833	3 & 4 Will. IV. c. 27 ... Real property limitation		A.E.A. 1925
	c. 42 ... Civil procedure		A.E.A. 1925
	c. 74 ... Fines ...		L.P.A.A. 1924 L.P.A. 1925 A.E.A. 1925

A.D.				
1833	3 & 4 Will. IV	c. 104 ...	Administration	A.E.A. 1925
		c. 105 ...	Dower ...	A.E.A. 1925
1838	1 & 2 Vict.	c. 110 ...	Judgments ...	L.P.A. 1925
1839	2 & 3	c. 11 ...	Judgments ...	L.P.A.A. 1924 L.C.A. 1925
		c. 60 ...	Debts recovery	A.E.A. 1925
1845	8 & 9	c. 106 ...	Real property	L.P.A.A. 1924 L.P.A. 1925
		c. 112 ...	Satisfied terms	L.P.A. 1925
1848	11 & 12	c. 87 ...	Debts recovery	A.E.A. 1925
1849	12 & 13	c. 26 ...	Leases ...	L.P.A. 1925
1850	13 & 14	c. 17 ...	Leases ...	L.P.A. 1925
1852	15 & 16	c. 76 ...	Procedure ...	L.P.A. 1925
1854	17 & 18	c. 97 ...	... ...	L.P.A. 1925
		c. 113 ...	Real estate charges ...	A.E.A. 1925
1855	18 & 19	c. 15 ...	Judgments ...	L.P.A. 1925 L.C.A. 1925
1857	20 & 21	c. 57 ...	... ...	L.P.A.A. 1924
		c. 77 ...	Probate ...	A.E.A. 1925
1858	21 & 22	c. 44 ...	... ...	Universities and College Estates Act, 1925
		c. 95 ...	Probate ...	A.E.A. 1925
1859	22 & 23	c. 35 ...	Property ...	L.P.A. 1925 S.L.A. 1925 A.E.A. 1925 L.C.A. 1925 T.A. 1925
1860	23 & 24	c. 38 ...	Property ...	L.P.A.A. 1924 L.P.A. 1925
		c. 59 ...	Universities ...	Universities and College Estates Act, 1925
		c. 115 ...	Crown debts	L.C.A. 1925
		c. 127 ...	Solicitors ...	L.P.A.A. 1924
1867	30 & 31	c. 47 ...	*Lis pendens*	L.C.A. 1925
		c. 69 ...	Real estate charges ...	A.E.A. 1925
1868	31 & 32	c. 4 ...	Sales of reversions	L.P.A. 1925
		c. 40 ...	Partition ...	L.P.A. 1925
1869	32 & 33	c. 46 ...	Administration	A.E.A. 1925
1871	34 & 35	c. 41 ...	Trade union	L.P.A. 1925
1873	36 & 37	c. 66 ...	Judicature ...	L.P.A. 1925
1874	37 & 38	c. 37 ...	Powers of appointment	L.P.A. 1925
		c. 78 ...	Vendor and purchaser ...	L.P.A. 1925

A.D.					
1875	38 & 39 Vict.	c. 77	...	Judicature ...	A.E.A. 1925
		c. 87	...	Land transfer	L.R.A. 1925
1876	39 & 40	c. 17	...	Partition ...	L.P.A. 1925
1877	40 & 41	c. 18	...	Settled estates	S.L.A. 1925
		c. 33	...	Contingent remainders ...	L.P.A.A. 1924
		c. 34	...	Real estate charges ...	A.E.A. 1925
1879	42 & 43	c. 78	...	Judicature (Officers) ...	L.P.A.A. 1924
1880	43 & 44	c. 4	...	Universities ...	Universities and College Estates Act, 1925
1881	44 & 45	c. 41	...	Conveyancing	L.P.A. 1925 S.L.A. 1925 T.A. 1925
		c. 68	...	Judicature ...	L.P.A.A. 1924
1882	45 & 46	c. 38	...	Settled land ...	S.L.A. 1925
		c. 39	...	Conveyancing	L.P.A. 1925 L.C.A. 1925
1884	47 & 48	c. 18	...	Settled land ...	S.L.A. 1925
		c. 71	...	Intestates' estates	A.E.A. 1925 S.L.A. 1925
1885	48 & 49	c. 49	...	East India Stock	T.A. 1925
1887	50 & 51	c. 30	...	Settled land ...	S.L.A. 1925
1888	51 & 52	c. 42	...	Mortmain ...	S.L.A. 1925
		c. 43	...	County Courts	L.P.A.A. 1924
		c. 51	...	Land charges	L.C.A. 1925
1889	52 & 53	c. 36	...	Settled land ...	S.L.A. 1925
		c. 47	...	Palatine Court of Durham	S.L.A. 1925
1890	53 & 54	c. 5	...	Lunacy ...	T.A. 1925
		c. 29	...	Intestates' estates	A.E.A. 1925
		c. 69	...	Settled land ...	S.L.A. 1925 L.C.A. 1925
		c. 70	...	Housing ...	S.L.A. 1925
1892	55 & 56	c. 13	...	Conveyancing	L.P.A. 1925
		c. 58	...	Accumulations	L.P.A. 1925
1893	56 & 57	c. 21	...	Voluntary conveyances	L.P.A. 1925
		c. 53	...	Trustee ...	T.A. 1925 L.P.A. 1925
1894	57	c. 10	...	Trustee ...	T.A. 1925 L.P.A. 1925
		c. 46	...	Copyholds ...	Law of Property Act, 1922
1896	59 & 60	c. 35	...	Judicial trustees	T.A. 1925

A.D.				
1897	60 & 61	c. 65 ...	Land transfer	Part I. A.E.A. 1925 Part II. L.R.A. 1925
1898	61 & 62	c. 55 ...	Universities ...	Universities and Colleges Estates Act, 1925
1900	63 & 64	c. 26 ...	Land charges	L.C.A. 1925 L.P.A. 1925
1907	7 Ed. VII.	c. 18 ...	Married women's property ...	L.P.A. 1925
1908	8	c. 36 ...	Small holdings	S.L.A. 1925
1909	9	c. 44 ...	Housing ...	S.L.A. 1925
1911	1 & 2 Geo. V.	c. 37 ...	Conveyancing	L.P.A. 1925 T.A. 1925 A.E.A. 1925 S.L.A. 1925
		c. 40 ...	Lunacy ...	T.A. 1925
1914	4 & 5	c. 47 ...	Deeds of arrangement	T.A. 1925
		c. 59 ...	Bankruptcy	A.E.A. 1925
1919	9 & 10	c. 35 ...	Housing ...	S.L.A. 1925
		c. 59 ...	Land settlement	S.L.A. 1925
		c. 99 ...	Housing ...	T.A. 1925
1920	10 & 11	c. 81 ...	Administration of justice ...	A.E.A. 1925
1922	12 & 13	c. 60 ...	Lunacy ...	T.A. 1925
1923	13 & 14	c. 9 ...	Agricultural holdings ...	S.L.A. 1925

The sections of the Law of Property Act, 1922, and of the Law of Property (Amendment) Act, 1924, which have been repealed are contained in the Seventh Schedule to the L.P.A. 1925, the Second Schedule to the A.E.A. 1925, the Fifth Schedule to the S.L.A. 1925, the Second Schedule to the T.A. 1925, the Schedule to the L.C.A. 1925, the Schedule to the L.R.A. 1925, and the Schedule to the Universities and College Estates Act, 1925.

TABLE OF THE PRINCIPAL CASES AFFECTED BY THE NEW LEGISLATION.

Austerberry *v.* Corporation of Oldham, 29 Ch. D. 750 (L. P. A. 1925, s. 79). (See also *infra* Spencer's Case and Tulk *v.* Moxhay).

Bates *v.* Kesterton, [1896] 1 Ch. 159 (S. L. A. 1925, s. 1).
Beaumont *v.* Jeffery, [1925] 1 Ch. 1 (L. P. A. A. 1924, 2nd Schedule).
Bebington *v.* Wildman, [1921] 1 Ch. 559 (L. P. A. 1925, ss. 140–142). (See also *infra* Dumpor's Case).

Capital & Counties Bank *v.* Rhodes, [1903] 1 Ch. 631 (L. R. A. 1925, s. 69).
Cohen *v.* Mitchell, 25 Q. B. D. 262 (L. C. A. 1925, ss. 2–3, L. R. A. 1925, s. 61).
Constable, Re, [1919] 1 Ch. 178 (S. L. A. 1925, s. 22).
Cox and Neve's Contract, Re, [1891] 2 Ch. 109 (L. P. A. 1925, s. 44, sub-s. (8)).
Cope and Wadland's Contract, Re, [1919] 1 Ch. 376 (S. L. A. 1925, s. 22).
Cundiff *v.* Fitzsimmons, [1911] 1 K. B. 513 (L. P. A. 1925, s. 190).

Dealtry, Re, 108 L. T. 832 (S. L. A. 1925, s. 80). (See also *infra* Lacon, Re).
Dearle *v.* Hall, 3 Russ. 1 (L. P. A. 1925, s. 137).
Dumpor's Case, 1 S. L. C. (L. P. A. 1925, ss. 140–142). (See also *supra* Bebington *v.* Wildman).

Economic Life Assurance Co. *v.* Osborne, [1902] A. C. 147 (L. R. A. 1925, s. 28).
Ellis *v.* Kerr, [1910] 1 Ch. 529 (L. P. A. 1925, s. 82). (See also *infra* Napier *v.* William).

Hastings Corporation *v.* Letton, [1908] 1 K. B. 378 (L. P. A. 1925, s. 181).
Helyar, Re, [1902] 1 Ch. 391 (S. L. A. 1925, s. 102).
Hewson *v.* Shelley, [1914] 2 Ch. 13 (A. E. A. 1925, s. 37).
Hotham, Re, [1902] 2 Ch. 575 (S. L. A. 1925, s. 98). (See also *infra* Theobald, Re).
Hunt *v.* Luck, [1902] 1 Ch. 428 (L. P. A. 1925, s. 14).

Jupp, Re, 39 Ch. D. 148 (L. P. A. 1925, s. 37). (See also *infra* March, Re).

Lacon, Re, [1911] 2 Ch. 17 (S. L. A. 1925, s. 80). (See also *supra* Dealtry, Re).
Leventhorpe *v.* Ashbie, Tudor's L. C. (L. P. A. 1925, s. 130).

March, Re, 27 Ch. D. 166 (L. P. A. 1925, s. 37). (See also *supra* Jupp, Re).
Moore and Hulm, Re, [1912] 2 Ch. 105 (L. P. A. 1925, s. 5).
Morrison, Re, [1901] 1 Ch. 701 (T. A. 1925, s. 57). (See also *infra* New, Re, and Tollemache, Re).

Napier *v.* Williams, [1911] 1 Ch. 361 (L. P. A. 1925, s. 82). (See also *supra* Ellis *v.* Kerr).
Nash, Re, [1910] 1 Ch. 1 (L. P. A. 1925, s. 161). (See also *infra* Whitby *v.* Mitchell).
National Provincial Bank and Marsh, Re, [1895] 1 Ch. 190 (L. P. A. 1925, s. 49). (See also *infra* Scott and Alvarez, Re).
New, Re, [1901] 2 Ch. 534 (T. A. 1925, s. 57). (See also *supra* Morrison, Re, and *infra* Tollemache, Re).

Patman *v.* Harland, 17 Ch. D. 353 (L. P. A. 1925, s. 44, sub-s. (5)).
Penrhyn's Settlement, Re, [1922] 1 Ch. 500 (S. L. A. 1925, s. 52). (See also *infra* Rodes, Re).
Phipps & Co. *v.* Rogers, [1924] 2 K. B. 45 (L. P. A. 1925, s. 61).

Quicke, Re, [1908] 1 Ch. 887 (T. A. 1925, s. 20).

Rayner *v.* Preston, 18 Ch. D. 1 (L. P. A. 1925, s. 47).
Roby, Re, [1908] 1 Ch. 71 (A. E. A. 1925, s. 49).
Rodes, Re, [1909] 1 Ch. 815 (S. L. A. 1925, s. 52). (See also *supra* Penrhyn's Settlement, Re).

Salomons, Re, [1920] 1 Ch. 290 (A. E. A. 1925, s. 42).
Sampson, Re, [1906] 1 Ch. 435 (T. A. 1925, ss. 36, 37, 38). (See also *infra* Tallatire, Re).
Sands to Thompson, 22 Ch. D. 614 (L. P. A. 1925, 1st schedule, part 2 (2)).
Scott & Alvarez, Re, [1895] 2 Ch. 603 (L. P. A. 1925, s. 49). (See also *supra* National Provincial Bank and Marsh, Re).
Shelley's Case, 1 Rep. 94 (L. P. A. 1925, s. 131).
Spencer's Case, S. L. C. Vol. 1 (L. P. A. 1925, s. 79). (See also *supra* Austerberry *v.* Corporation of Oldham, and *infra* Tulk *v.* Moxhay).

Tallatire, Re (1885), W. N. 191 (T. A. 1925, ss. 36, 37, 38). (See also *supra* Sampson, Re).
Theobald, Re, 19 T. L. R. 536 (S. L. A. 1925, s. 98). (See also *supra* Hotham, Re).

Tollemache, Re, [1903] 1 Ch. 457, 955 (T. A. 1925, s. 57). (See also *supra* Morrison, Re; New, Re).

Tulk *v.* Moxhay, 2 Ph. 774 (L. P. A. 1925, s. 79). (See also *supra* Austerberry *v.* The Corporation of Oldham, and Spencer's Case).

West *v.* Williams (1889) 1 Ch. 132 (L. P. A. 1925, s. 94).

Whitby *v.* Mitchell (1890) 44 Ch. D. 85 (L. P. A. 1925, s. 161). (See also *supra* Nash, Re).

Willet and Argenti, Re, 60 L. T. 735 (L. P. A. 1925, s. 45, sub-s. (4)).

Williams and Duchess of Newcastle's Contract, Re, [1897] 2 Ch. 144 (L. P. A. 1925, s. 45, sub-s. (9)).

Wing *v.* Angrave, 8 H. L. C. 183 (L. P. A. 1925, s. 184).

Wise *v.* Whitburn, [1924] 1 Ch. 460 (A. E. A. 1925, s. 36).

LAW OF PROPERTY BILL, 1922.

Extract from Official Report,
Volume 154, No. 51,
House of Commons Debates of 15th May, 1922.

SPEECH BY THE SOLICITOR-GENERAL,

Sir Leslie Scott, K.C., M.P.,

On Second Reading.

The Solicitor-General (Sir Leslie Scott) : I beg to move "That the Bill be now read a Second time."

INTRODUCTORY.

This is not a party Bill. It raises no issue of party politics. It does not interfere between landlord and tenant. It leaves untouched the relations between the State and private owners. Members of all parties have collaborated in its production. In the remarks that I have to make, I shall address with equal hope Members in all parts of the House. Some Bills are so short and simple that the Government's spokesman moving the Second Reading is almost relieved from the necessity of explaining their provisions to the House. But, short and simple as is this Bill, and certain as I feel that every Member present has already read every word of it, I cannot feel entirely dispensed from the duty of offering the House some explanation of what it proposes, and, indeed, in making my explanation I feel fairly sure that I shall have need of that indulgent patience which this House is good enough to extend to a new and inexperienced Minister. May I, at the outset, be quite frank with the House? My task to-day is not an easy one, and for this reason. The greater part of the

Bill is highly technical, and it is impossible to explain even its main provisions in other than technical language. I fear, therefore, that those hon. Members who are not learned in the law will find my story somewhat tedious if I have to embark on legal explanations. On the other hand, I feel that the House, as a whole, and in particular hon. Members who are learned, will expect, and rightly expect, from a Law Officer some legal explanation of an essentially legal Bill. In these circumstances I will endeavour to combine simple language with legal accuracy, be as short as I can, and trust to the sympathetic and understanding tolerance of the House.

I believe this is the biggest Bill ever introduced into Parliament, and its very bulk appals. But there are two considerations for the encouragement of hon. Members. With the exception of the Conveyancing Act of 1911, there has been no legislation whatever on the main subject-matter of the Bill since the Settled Land Act of 1890, thirty-two years ago, and, apart altogether from the great reforms to be effected by the Bill, the experience of those thirty years has accumulated a mass of minor Amendments which are urgently needed. These minor Amendments are, of course, included in the Bill, and they account for a considerable portion of its contents. The other consideration is this : The very complexity of the Bill is the measure of its need. It is just because the system of real property law, under which we groan to-day, is so grotesquely complicated that its simplification inevitably involves a formidable total of detailed legal Amendments. There is only one alternative to the method of detailed Amendment, if you are to reform a complicated system of statute and case law—the growth of centuries—and that is to destroy completely and build afresh. But in this old civilisation of ours, which has been built up, certainly so far as the law is concerned, by evolution rather than by revolution, I do not believe there is anyone who would prefer the clean slate and a new code such as might be thought appropriate for a newly settled territory. On those two considerations those familiar with the subject will be in entire accord with me.

The Bill is not a brand-new invention. It is not a new-fangled, ready-made scheme of law. It is not revolution; it is evolution. It is also, I hope, full of wisdom, but it is not like

Minerva, the goddess of wisdom, born fully grown. It is the slow and gradual product of half a century's work by legal reformers, building on existing foundations. In that work are associated the names of many Lord Chancellors—Lord Cairns, Lord Selborne, Lord Halsbury, Lord Haldane, and, last but not least, Lord Birkenhead. Let me here render tribute where, above all, in my opinion, tribute is due. It is to our present Lord Chancellor (*a*) more than to any one man that the nation is indebted for the Bill as it appears to-day. It was his great knowledge, his grasp of the essentials of the Bill, and, above all, his tact and skill in piloting the Bill through the dangerous shoals of another place, in explaining its provisions, in considering and meeting objections, in assimilating and incorporating suggested improvements—it was these qualities of his which have made it almost an agreed bill, at any rate, from most points of view, and enable me to-day to introduce it to the House almost as an old friend. But, however much others may approve it, and however familiar it may be to some hon. Members, the Bill comes before us now to be judged on its merits; and I think the House will desire that before dealing with its history I should explain its contents and justify its proposals.

OBJECT OF THE LEGISLATION.

Broadly speaking, the object of the Bill is to facilitate and cheapen all dealings in land, and in approximately its present form it was recommended unanimously some three years ago in the Report of a Committee appointed by the Prime Minister (*b*) over which I had the honour to preside. Our terms of reference were

> "to advise what action should be taken to facilitate and cheapen the transfer of land."

Our Report is Command Paper (1919) No. 424. The general reasons for the reforms in the Bill will be found in the Report. All Members are familiar with the simplicity of procedure which characterises the transfer of personal property, such as registered stock issued by companies. Many are familiar with dealings

(*a*) The Earl of Birkenhead. (*b*) Mr. Lloyd George.

in ships, and know how simple they are. Land, of course, is not the same as stocks or ships. It is immovable, it is the subject of easements, of restrictive covenants, can be split up vertically between surface and minerals, and has other characteristics which make it impossible in the nature of things for it to be treated exactly as personal property. But land in England to-day is the subject of strange and artificial rules of law; dealings in land are affected by mystic formulæ of the conveyancer's art; and, in the result, those who want to deal with land often find in their way complications which are as unnecessary as they are costly. Do not misunderstand me. I do not say that all or anything like all transactions in land to-day are complicated and costly. All I say is that some are very much so; that many are more complicated and more costly than they need be, and that the great majority might be—and will be if this Bill passes—simpler than they are. Lastly, even the shortest conveyance to-day will be simplified. I observe that an hon. Member who is more familiar with the subject of Conveyancing than I am shakes his head. I say to him, words of limitation are rendered unnecessary.

TO ASSIMILATE THE LAW OF REAL TO PERSONAL PROPERTY.

So far as is compatible with the nature of land, the main proposal of the Bill is to assimilate land, or real property as it is called, to personal property in regard to its legal incidents; or, putting it shortly, to abolish legal distinctions between real and personal property (*c*). The assimilation is achieved, not by adopting without alteration the existing law as to personal property, but by selecting from each system its best characteristics and applying those selected rules to both alike; although, in the main, I agree that it is the law of personal property which the Bill adopts. Having put real property under the same rules of

(*c*) See L. P. A. 1925, more particularly Part I.; also s. 130 (17). A. E. A. 1925, Part I., more particularly s. 2; Part III., ss. 32, 33, 34 (3); Part II. of the First Schedule; Part IV. S. L. A. 1925, s. 67. "The principle for which I contend is merely that there ought to be one law for both land, goods, and money so far as their different natures and as the policy of the Settled Land Acts permit." (Sir Arthur Underhill, Cmd. Paper 1919, 424, p. 33).

law and equity in most respects as personal property, the Bill is then able to effect a resultant simplification in all dealings with land, which will be of great practical value.

TRUSTS AND MOST EQUITIES TAKEN OFF THE TITLE.

All trusts and most equities are taken off the title and can be put, as it were, behind a curtain (*d*), where they can operate in complete accordance with the intention of the parties, but will no longer concern a purchaser or mortgagee.

Another main proposal of the Bill is in connection with intestacy. One source of artificial complication introduced into dealings in land is the difference in the rules of inheritance between real and personal property where a person dies intestate. The Bill puts them both on the same footing, and provides, at the same time, for the re-enactment of the Statutes of Distribution, thus amended in accordance with modern needs (*e*). In connection with this subject, it is to be observed that women will, for the future and for the first time in English history, be placed on a footing of complete equality with men regarding succession on an intestacy (*f*). A surviving wife or mother, for instance, will have the same rights and privileges of inheritance and succession as a surviving husband or father.

Finally, a contingent provision is made for the possibility of a compulsory extension of registration of title twelve years hence, should experience then show that such an extension is desirable (*g*). Such is a rough outline of the plan of the Bill.

I will now briefly fill in the picture with a more definite indication of the particular reforms by which the Bill carries out its plan. It contains a vast number of Amendments of the law, particularly in its practical working, and on the side of conveyancing and procedure. In a sense these are all reforms. But in truth they are mostly the mere consequential applications of the major reforms on which the Bill is based. Putting the same thought in the converse way, there are a certain number

---

(*d*) See more particularly L. P. A. 1925, Part I., ss. 1, 2, 3, 4, and 10; Part II., s. 42 (1); Part III., ss 85-120; L. C. A. 1925 generally; S. L. A. 1925, s. 21.

(*e*) A. E. A. 1925, Part IV.

(*f*) *Ibid.*, s. 46.

(*g*) L. R. A. 1925.

of these reforms which are carried out consistently all through the Bill, and cause the whole of its provisions to dovetail into one another and to be mutually interdependent. I wish to emphasise that aspect—the mutual interdependence of all its provisions.

THE SEVEN LAMPS WHICH LIGHT THE BILL.

Looking on the subject a little from an outside point of view, as all common law lawyers like myself must, I see seven of these main reforms.

I. Simplification of Tenures.

(a) Copyhold and Customary Tenures Abolished.

The first is to simplify the tenure of land. This is effected by three separate changes. Firstly, the Bill abolishes altogether those curious survivals of feudalism like copyhold and customary land, or land subject to the custom of gavelkind in Kent. Incidentally, it also abolishes borough English and all the other hundred or so local customs which affect succession (*h*). They do not directly affect conveyancing, but affect succession. This reform, the abolition of copyhold, has long been advocated by every Committee and Commission appointed to consider the subject, and, indeed, the principle of it was in a tentative form embodied in the Copyhold Acts of last century and consolidated in the Act of 1894. The plan adopted by the Bill is that of the existing law in Lands Clauses Consolidation Acts (*hh*). We follow that precedent. Where a public body acquires copyhold land under compulsory powers the land is converted automatically into freehold, and the compensation payable to the lord of the manor is worked out afterwards. The Bill provides a period of ten years during which the compensation may be worked out by agreement or, in default, with the assistance of the Minister of Agriculture. Another five years are allowed within which either the landlord or tenant can compel assessment of compensation

(*h*) L. P. A. 1922, Part V. and Twelfth Schedule, and A. E. A. 1925, s. 45.

(*hh*) All these Lands Clauses Consolidation Acts are read together as parts of a single code. (*R.* v. *Lord Mayor of London* (1867), L. R. 2 Q. B. 292). The general name was given to these statutes by 52 & 53 Vict. c. 63, s. 23 (Interpretation Act, 1889).

before the incidents are extinguished (*i*). The details as to compensation have been the subject of prolonged discussion between the Lord Chancellor (*ii*) and those interested, particularly the Land Union, and I believe that the arrangements embodied in the Bill are now, as a whole, considered fair to both sides; that is to say, both to the lord of the manor and to the copyhold tenant. At any rate, one friend of mine, who has more than 20,000 copyhold tenants on his estate, told me only yesterday that he was absolutely satisfied with the provisions of the Bill as a fair arrangement.

I hear a suggestion from the opposite side of the House that it is the tenants who have to complain. I think the hon. and gallant Member who interjected that remark will find that the complaint, if it comes from anyone, will come rather from the side of the Lords of the Manor than from the tenants. Should any question still be raised upon this in Committee, I can only say that I will give it the most careful consideration in order that, in the result, an arrangement in regard to compensation may be made that is really fair and workmanlike for both sides. I believe the Bill has already that result.

(b) Perpetually Renewable Leaseholds Abolished.

The second of the changes to effect the first reform is the abolition of perpetually renewable leaseholds, which are a useless and costly paradox. The Bill arranges for their conversion into terms of 2,000 years, the periodic fines for renewal being expressed in a proportionate increase of the annual rent.

(c) Leaseholds for Life Abolished.

The third of the changes effecting the first reform is to do away with leaseholds for life, the existing ones being converted into terms of ninety years, terminable on notice by either side, on the falling in of the life on which the lease depends (*k*).

(*i*) See L. P. A. 1922, Part VI., ss. 138-144, substituting L. P. A. 1925, s. 44 (7) for L. P. A. 1922, s. 138 (10); L. P. A. A. 1924, Second Schedule.

(*ii*) Lord Birkenhead.

(*k*) L. P. A. 1922, Part VII., s. 145, and Fifteenth Schedule, substituting L. P. A. 1925, s. 149 (6) for s. 7 (3) of the Fifteenth Schedule of the L. P. A. 1922.

The broad result of the three changes is that for the future there will be only two systems of land tenure, freehold and leasehold for years, in itself, I believe, a far-reaching simplification, which will result in immense saving of costs.

II. Reduction of Number of Legal Estates to Absolute Fee-Simple and Term of Years.

The second main reform relates not to legal tenure but to legal estates, which, to those hon. Members who are not learned in the law, I may say mean approximately degrees of ownership. That is a very rough approximation, but that is the sort of thing intended by the phrase "legal estates." The Bill reduces legal estates in land, as distinguished from equitable or beneficial interests, to two, namely, the absolute fee simple and a term of years (*l*). No one has ever suffered by there being no legal life estates in shares or ships. The only permissible legal estate in such things is absolute ownership, corresponding to the fee simple in land. The Bill, accordingly, abolishes all other legal estates, such as estates tail or remainders (*m*), and repeals the Statute of Uses upon which so top-heavy a burden of erudite law has been constructed by the Courts (*n*), to the detriment of the general public, if I, as a common law lawyer, may say so. It may be asked why, if we are following the analogy of stocks and shares with regard to the abolition of legal life estates, the Bill does not follow that analogy in regard to leases. The answer is, for reasons of practical convenience. Land differs in this respect from stocks and shares, that one piece of land is individual in its characteristics. It is wanted by one man and not by another, and is not the equivalent of any other piece of land, and the leasehold system responds to a real need of the community. For a similar reason, the Bill preserves rent

---

(*l*) L. P. A. 1925, s. 1 (1).

(*m*) L. P. A. 1925, ss. 1 and 39; First Schedule, Part I.

These estates will still be able to subsist in equity. Furthermore, personalty will be able to be entailed in equity—a novel introduction. See p. 39.

(*n*) L. P. A. 1925, s. 1 (10).

charges, or chief-rents, as they are called in the North (*o*). In certain parts of the country these rent charges or chief-rents are very widely used for estate development and investment purposes, and it would not be possible to take them off the title and turn them into equities without interfering with the business habits of certain sections of the community. In the Committee we discussed this question at considerable length, and we were absolutely convinced they must be kept for reasons of practical convenience. The reduction of legal estates to two is a far-reaching reform, but it must not be understood as damaging in any way beneficial interests in land. Trusts and settlements, existing or future, will be enforced in equity behind the curtain (*p*).

III. Tenancy in Common Abolished. At Law Settled Land Principles Applied.

The third main reform relates to tenants in common (*q*). The proposal of the Bill is to prevent land being split up legally into undivided shares held in common. As there is no justification for splitting the legal estate in land, as it were, vertically into life estates and remainders, so it is an unnecessary complication by another legal fiction to split it up horizontally into legal undivided shares as is done to-day. Companies' stocks cannot

---

(*o*) L. P. A. 1925, ss. 1 (2) (4), 122. These may be "perpetual or temporary." The former very common in Lancashire, the latter everywhere.

"The people themselves in certain parts of England have evolved the practice of buying land at a chief (perpetual) rent instead of purchasing it for a lump sum, and in the same way builders have in other parts (notably London) evolved the analogous system of taking long leases (ninety-nine years) at small ground rents, reckoning that during that long term they will be able not only to recoup themselves for their capital expenditure on bricks and mortar, but also to make a handsome profit. . . . It is very doubtful whether London could have been built upon any other system." (Sir Arthur Underhill in Cmd. (1919) 424, p. 26).

(*p*) L. P. A. 1925, ss. 1, 2, 3, 4; S. L. A. 1925, ss. 16, 21. The metaphor has been frequently misinterpreted by critics of the legislation. It does not at all follow that all that is now behind the curtain was hitherto obstructive to purchasers. On the other hand, there are two sides to a curtain, and the new legislation has brought by means of the Land Charges Act, 1925, many equities in front for all to view.

(*q*) Tenancy in common is aptly described as "in effect, a settlement for concurrent instead of for successive interests" (Cmd. (1919) 424, p. 10).

be held in legal undivided shares and there is no need for land to be held in this way. Land held by tenants in common will be vested in trustees on trust for sale, with full power to postpone the sale, the trustees being given the statutory position of a tenant for life under the Settled Land Acts with power to dispose of the land and give a good title (*r*). This artifice, as the House knows, or at any rate those Members of it who are learned in the law, is frequently employed to-day in conveyancing in order to prevent the trouble which so frequently arises from land being left to a class of persons. The class, when land is left to it, may in course of time become very numerous, and individual numbers may in their turn split up their undivided shares, and so on almost *ad infinitum*, and in the result when it is desired to dispose of the land, it is almost impossible to obtain the consents of everyone interested, and proceedings under the Partition Acts have to be undertaken in the Courts with much consequent expense. The value of a share may even be eaten up in costs. The Bill, again, properly protects the beneficial interests of persons who to-day have undivided shares (*s*).

IV. Trusts and Most Equities Taken Off the Title.

The fourth main reform of the Bill, which is rendered possible by the first three I have just described, is to keep all settlements and trusts and nearly all equities off the title, just as they are kept off the title to companies' stocks to-day, though not quite in the same way. As a result of these provisions, the purchaser of land will be relieved from by far the greater part of the burden involved to-day in investigating the vendor's title (*t*). To those

---

(*r*) L. P. A. 1925, ss. 1 (6), 34-38; First Schedule, Parts IV., V.; S. L. A. 1925, s. 36. "In regard to existing undivided shares, the trusts affect the proceeds of sale and rents until sale, and a purchaser will not be concerned therewith." Cmd. (1919) 424, p. 43 (Memorandum by Sir Benjamin Cherry).

(*s*) Including charges thereon (L. P. A. 1925, s. 102; S. L. A. 1925, s. 36 (5)). As respects the future the creation of undivided shares is prohibited except in equity under a settlement, in which case, when the trust takes effect, the settled land will be held on trust for sale (L. P. A. 1925, s. 34 (1); S. L. A. 1925, s. 36 (4)).

(*t*) "The usual complicated provisions of settlement" of land will be continued "as equitable interests, provided that such complications are not to

who are familiar with the subject, a glance at the Eighth and Ninth Schedules to the Bill will show on the one hand how vastly shorter an abstract of title will be in the future than it has been in the past, and how much simpler the instrument effecting the transaction will become. The Eighth Schedule dealing with abstracts of title prints in italics the only items which will have to be present in an abstract in future, and hon. Members will see how much is cut out (*u*).

V. Conversion of Mortgages into Charges, Leaving Legal Title in Mortgagor.

The fifth main reform relates to mortgages (*x*). Legal mortgages are to-day generally effected by conveying this legal estate to the mortgagee. This is in reality a legal fiction; in equity, as in business, a mortgage is nothing more than a charge for which the land is used as a security. The Bill proposes to mould the law to comply with the reality. Legal mortgages of freeholds for the future will, as is sometimes done to-day by conveyancers, take effect by means of creating a long leasehold term leaving the legal fee simple in the mortgagor until the mortgagee sells off or forecloses (*y*). Legal mortgages of leaseholds in a similar way

---

be disclosed on the occasion of a sale, and are to be disregarded by a purchaser or mortgagee in a manner similar to the course adopted where stocks and shares are comprised in a marriage settlement." (Principles and objects of the new legislation in Report of sub-committee, Cmd. (1919), 424, p. 35). "Whilst preserving the present law that a purchaser for value of a legal estate can in good faith, without notice, obtain a good title it reduces the number of cases in which a purchaser will be affected to a minimum. The reduction is effected—(a) by introducing a trust for sale in certain cases; (b) by adopting and extending the principle of the Settled Land Acts by which the conveyance by a person having the power of disposition overrides all the equities subsisting under the settlement—the equities attaching to the proceeds of sale; (c) by requiring certain rights affecting the land to be registered . . . and making such rights liable to be overridden on a conveyance of the legal estate to a purchaser unless the rights are registered notwithstanding that the purchaser may have notice of them." (Memorandum, Cmd. (1921), 1287, p. 4).

(*u*) See references to the statutes in first note (*a*) on p. 27, on p. 3, and generally, L. P. A. 1925, Part IV., ss. 130-138, and generally, Schedules III.-VI.

(*x*) See more particularly L. P. A. 1925, Part III., ss. 65-120, and Schedules III.-VI.

(*y*) For an account of the system of mortgage by demise, hitherto obtaining, see *Bythewood and Jarman* (4th ed.), Vol. III., p. 469. Reprinted in *The Conveyancer*, Vol. II., p. 5, *sub tit.* "Charges and Mortgages."

will be effected by a subdemise and not by assignment. The mortgagor, who to-day, in business and in common sense, still remains the owner, though in law he gives up his ownership, will thus retain all his legal rights until the security is realised or, at least, possession is taken. The system is by making a long leasehold term. The term is vested in the mortgagee, the mortgagee will not, therefore, be entitled to the fee simple. He does not get the fee simple; it remains with the mortgagor (*z*).

This new practice will also allow—and hon. Members who are solicitors will appreciate the value of this—a succession of legal mortgages to be made (*a*). An alternative method of mortgaging, which is very simple, is allowed by way of legal charge as it is called, whether of freehold or leasehold land. Such a statutory charge will have the same effect as a mortgage by demise or subdemise, and by reason of its simplicity, I cannot help thinking, it will in the future gradually become the ordinary form of mortgage (*b*).

VI. Settled Land and Tenant for Life.

The sixth main reform relates to settlements (*c*). This will be achieved by adopting a plan often adopted to-day, namely,

---

(*z*) Until foreclosure or sale to realise the security when the mortgage term becomes automatically converted into freehold (L. P. A. 1925, s. 88 (1)). There is a similar provision in regard to mortgage of leaseholds—the power of sale vesting the leasehold reversion as well as the mortgage term in the purchase (L. P. A. 1925, s. 89 (1)).

(*a*) The new legislation "has the additional advantages of making second and subsequent mortgages legal instead of . . . equitable for they" will be "created by a series of long terms" (which are *legal* estates) "each a few days longer than that which preceded it. Thus A. the freeholder could mortgage (1) to B. for a term of 1,000 years; (2) to C. for a term of 1,300 years, subject to B.'s term, and (3) to D. for a term of 1,400 years subject to C.'s term of 1,300 years. In such case all four persons would have legal estates with all the protection afforded by legal ownership." (Sir Arthur Underhill in Cmd. (1919), 424, p. 26). It should be observed, however, that a mortgage term to take effect by way of reversion upon a longer term is possible under L. P. A. 1925, s. 149 (5), thus not rendering it essential that a second mortgage term shall be longer than the first.

(*b*) There is a difference of opinion among conveyancers as to the future utilisation, as well as to the reputed advantages, of this statutory charge.

(*c*) See generally, S. L. A. 1925. Several of the various enactments of the new legislation deal with the principles and working of the system.

by means of a trust instead of the present system of a succession of legal estates, which shift, under the Statute of Uses, from one man to another without any evidence in writing. The tenant for life is, by the Bill, made the owner in law, as in business for most purposes he already is to-day, the settlement attaching to the moneys realised upon a sale, and the purchaser taking free of the settlement, provided he passes the purchase money to the trustees of the settlement. As a security against fraud—and I would say, generally, that the greatest care has been taken all through the Bill to make certain that frauds cannot even be attempted, and if any hon. Member sees a loophole in Committee, we shall give it the closest consideration—as a security against fraud, the Bill requires that if the trustees are individuals there shall be at least two, more than four are forbidden for reasons of practical convenience. One trustee is permitted if it be a trust corporation or a bank, and incidentally similar precautions are imposed where land is held on trust for sale. I desire particularly to make it clear that for family purposes settlements are left unimpaired by the Bill, which will still be effected in equity for all purposes, just as effectively as they are to-day. The arrangements which are essential in the case of large estates, particularly where the head of the estate has a dignity or honour, for settling the property upon the head of the family and then upon his eldest son, and so on, will be achieved just as effectively in the future as to-day, only in equity instead of at law, and the complications of the settlement will be kept off the title to the land (*d*).

(*d*) " Substantially this scheme provides that the entire fee simple or term of years which is the subject of settlement is to be conveyed from time to time to each successive tenant for life or in tail as and when he becomes entitled to possession. He would thus become the ostensible absolute legal owner, although in reality only a trustee for himself and his successors. In order to prevent a tenant for life from dealing with the estate and pocketing the proceeds so as to injure his successors the scheme " provides " that the instrument conveying the property to him should contain an appointment of trustees for the purposes of the Settled Land Acts." The appointment " would act as a danger signal, intimating to purchasers, mortgagees and others that the ostensible legal owner is really a trustee whose powers are limited " by the Settled Land Acts " as extended (if at all) by the conveyance in question. The settlement itself is to be kept off the title, and is in no way to affect or concern a purchaser, mortgagee or lessee. The document in fact vesting the estate in a tenant for life in possession creates in favour of a purchaser, mort-

VII. Intestacy.

The seventh reform relates to intestacy. In a sense the provisions of the Bill relating to intestacy are collateral to the main objects of the Bill. But broadly speaking, they do affect the transfer of land and they do greatly simplify the title to land by bringing to an end the complications which flow from the existing state of the law, as, for instance, leasehold land being personal estate and not real estate. But as by these provisions beneficial rights are altered, the proposals must of course be justified also as fair and right on their merits. I believe there is general agreement that, judged by this standard, these proposals are right. It is Part VIII. of the Bill which deals with this subject (*e*).

THE LAW OF REAL AND PERSONAL PROPERTY ASSIMILATED.

That part assimilates the law of devolution of real and personal property in the case of an intestacy. Its main proposals are clearly summarised on pages 26, 27 and 28 of the Memorandum to the Bill (*f*). As they are so clearly summarised

---

gagee or lessee . . . a certified tenant for life capable of exercising the powers " above mentioned and " certified trustees of the settlement for the purposes of the Settled Land Acts to whom all capital money arising from sales and mortgages would have to be paid. . . . All that it comes to is this. You must have two sets of trustees; one a trustee of the land itself, who must always be the person or persons to whom" the Settled Land Act gives " powers of sale and leasing, and the other the trustees of capital moneys arising from sales, etc." (Sir Arthur Underhill in Cmd. (1919), 424, pp. 33–34). On the death of the tenant for life the legal estate will pass to the trustees of the settlement as the special personal representatives for this purpose of the tenant for life who will assent to its vesting in the person next entitled under the settlement. This assent will form a document of title, and will save the cost of furnishing evidence of who the next person entitled is, and dispense with the charge for death duties. (See Memorandum Cmd. (1921), 1287, p. 4; A. E. A. 1925, ss. 10, 22-24. As to death duties, see herein, pp. 38, 39.)

(*e*) A. E. A. 1925, Part IV.

(*f*) The principles of the new rules of devolution of an intestate's property may be stated briefly in the following way :—

The property is to be held by the personal representatives of the intestate as to real estate upon trust for sale, and as to personal estate to call in and sell, and convert with power in either case to postpone sale, etc., provision being made that personal chattels remain unsold unless needed for administration. Income of the estate, however invested, to be applied as income as from

there I do not propose to delay the House with an enumeration of their details.

SEX EQUALITY.

They put the two sexes on an absolute equality, abolishing the preference which has hitherto been given to the male. Indeed, this equality is borne in mind throughout the Bill, and it is an interesting fact, referred to in the Memorandum, that the proposals of the Bill in regard to what is to be done with property on intestacy are, in the main, based upon an examination of a very large number of wills at Somerset House. The House is asked to do what that evidence indicates intestates would do, if they made their wills and did not die intestate. That scrutiny discloses the fact, ignoring intestacies of infants—putting them on one side—that about 98 per cent. of intestates' estates are under £1,000, and consequently the provision of the Bill that the surviving husband or wife should take absolutely the furniture and other like effects and a first charge for £1,000 will, in the

---

the death. Until distribution personal representatives may invest residue after payment of debts, etc., in trust investments with power to vary. All hitherto prevailing canons of descent are abolished, as also escheat, tenancy by the curtesy, dower and freebench, with an exception in regard to the latter specified in A. E. A. 1925, s. 45 (1). Provisions as to what are termed statutory trusts are framed, based on the drafts, of commonly-used, well-drawn wills. The distribution is determined upon principles which express sex equality, the priority of the whole-blood over the half-blood, and exclude all relations more remote than descendants from grandparents, thus, barring second cousins. Several provisions enable personal representatives of an intestate's estate to make use of advantageous administrative powers frequently found in well-drawn wills. There are particular provisions relating to infants and lunatics.

The administrative scheme is typical of the policy to provide, as it were, a kind of legal shorthand by which blocks of well-tried conveyancing clauses are incorporated by assumption.

Other illustrations of the same policy are provided by the Trustee Act, 1925, s. 33, which by use of the words "protective trusts" affords means for giving effect to the protected life interest well known to conveyancers. This endeavour to standardise implicitly is paralleled by a reservation of power to issue prescribed forms explicitly. The L. P. A. 1925, s. 46, provides that the Lord Chancellor may prescribe forms and conditions of sale of land applicable in the absence of an expressed contrary intention.

Similarly, s. 179 gives the Lord Chancellor power to publish forms to which testators can refer in their wills.

Graduated sets of investment clauses seem to suggest themselves as opportune for consideration as a time and space saving device.

great majority of cases, give the whole estate to the survivor absolutely. In those cases where the estate exceeds £1,000, the survivor will take a life interest in the balance if there are no issue, or a life interest in a moiety if there are issue. Power is also given to purchase or redeem the life interest with the consent of the tenant for life or with the leave of the Court.

FIVE MINOR REFORMS.

The seven reforms which I have just shortly summarised I should like to regard as the seven lamps of the Bill, by which to light our path through what, candidly, have always appeared to me to be the somewhat gloomy and forbidding corridors of the Measure. I believe those seven main reforms will afford the clue to nearly all the provisions of the Bill. Ancillary to them are some minor reforms—a good many, but there are only five that I want to mention. When a tenant for life dies, the legal estate will pass on his death to the trustees of the settlement as his special representatives for the administration of the settled estate, and the trustees of the settlement will in writing vest the land in the person next entitled, the next tenant for life, and nominate (*g*) the proper (*h*) persons to be Settled Land Act trustees. The second minor reform I want to mention is this. As it is one of the main principles of the Bill that there always should be a person of full age, able to convey the legal estate, and give a good title to the purchaser, so during a minority the Bill vests the legal estate in Settled Land Act trustees, who have, of course, power to act on behalf of the infant (*i*).

The third minor reform is this. One of the greatest difficulties experienced in practice, I believe, in keeping trusts off the title, arises from the statutory charge on the land in favour of the Commissioners of Inland Revenue for Death Duties. For instance, if land is conveyed to a trustee on a secret trust and the trustee dies, the trust must be disclosed to show that no duty became payable on the death of the trustee. This difficulty is met by a provision in the Bill, to which the Inland Revenue have

---

(*g*) *I.e.*, specify by name.
(*h*) S. L. A. 1925, ss. 6—7; A. E. A. 1925, ss. 10, 22, 23.
(*i*) S. L. A. 1925, s. 26.

assented, that a charge for Death Duties is not to affect a purchaser unless it is registered as a land charge under the Land Charges Registration and Searches Act of 1888 (*j*). It will, therefore, always be possible for a purchaser to know whether the land is free from such a charge without investigating trusts. Questions may arise about that, which I shall be glad to deal with in Committee, but I believe it is a very substantial reform.

The fourth of the minor reforms is this : The system of registration of land charges is considerably extended in the Bill by making it applicable, on the one hand, to certain equities, such as restrictive covenants and contracts of sale, and, secondly, to charges for local expenses, such as street paving; and in future an official certificate of search at the local town hall or at the Land Registry, as the case may be, should give complete protection to the purchaser (*k*).

The fifth minor reform is this : In regard to real property the Bill preserves, as I stated, in equity the system of settlement and entail, and so it also extends that system in equity to all personal property, with the result that it will hereafter be possible to settle or entail personalty by the same words as realty, without any complex trust (*l*).

REGISTRATION OF TITLE.

The last part of the Bill upon which I desire to say a few words is that concerned with registration, which is dealt with in Part X, and on this I want to make what I think a rather important observation (*m*). I want to clear up, in connection with registration of title, some serious misconception which there seems to have been on the subject. The merits of 99 per cent. of the contents of Part X of the Bill and the Sixteenth Schedule, dealing with registration of title, have been obscured by a controversy about the remaining 1 per cent. The vastly greater portion of Part X and the whole of the Sixteenth Schedule relate

---

(*j*) L. P. A. 1925, ss. 16, 17; L. C. A. 1925, s. 10.
The registration is to be effected under the L. C. A. 1925.
(*k*) L. P. A. 1925, ss. 16, 17; L. C. A. 1925, s. 10.
(*l*) L. P. A. 1925, s. 39.
(*m*) See L. C. A. 1925, generally.

solely to amendments in the Land Transfer Acts which are intended to facilitate their good working in the interest of those who are already registered owners or may become so hereafter in the London area, where it is compulsory, or voluntarily outside it. These amendments have for the most part been long recognised as necessary or at any rate as very desirable; and were recommended, for instance, by Lord St. Aldwyn's Royal Commission in 1911 and by my own Departmental Committee in 1919. The remainder of the proposals in Part X and the Sixteenth Schedule, with the exception of the 1 per cent., are merely consequential on the reforms in the practice of conveyancing which I have already described to the House, and none of the amendments in question in Part X or the Sixteenth Schedule have anything whatever to do with the question of extending compulsory registration, which is dealt with exclusively in Sub-section (5) of Clause 181. Outside the Sub-section the amendments are, in my judgment—and I submit the view to the favourable consideration of the House—merely a measure of justice to registered owners already on the register. Their adoption will, in a substantial degree, facilitate and cheapen dealings by such owners and so improve their property; and the House should remember that a vast number of properties on that register are owned by or for the benefit of persons of small means in all classes of society.

I say nothing more upon the non-controversial provisions affecting registration of title, and I pass at once to the burning question of compulsory registration, upon which I want to say a little. Independently of Lord Westbury's Act of 1862, as the House knows, the first main Act on the subject still in force was passed in 1875, providing for a purely voluntary system. In 1897 Lord Halsbury introduced his Land Transfer Bill of that year, providing machinery for applying the system compulsorily in a county or part of a county. Under that Act registration was made compulsory in the County of London, but that Act prevented any subsequent extension of compulsory registration unless a county council, of its own initiative, met together, and with a meeting of two-thirds of its members passed a resolution asking for it. It is not perhaps surprising that no county council has actually taken the trouble to take that initiative, especially

when we bear in mind that the Acts relating to registration of title have been, and still are, in serious need of amendment. In fact, no county has so asked, and the result is that registration is to-day compulsory only in the County of London. This fact led, in 1908, to the appointment of a Royal Commission, presided over by Lord St. Aldwyn—the present Viscount Cave (*n*) and Lord Buckmaster being members—to consider the working of the Land Transfer Acts and to advise on the subject generally. They reported : (1) that the question was a national and not a local one ; (2) that the system of registration under the Acts was imperfect and required amendment in a number of particulars ; and they expressed the opinion that it was important to reform the law by assimilating real property law to that of personalty, as is now proposed by the present Bill. They further advised that the amendments should be made in the system of the Land Transfer Acts and the revised system tested by practice before considering any compulsory extension.

In 1919 the Committee of which I was Chairman in effect endorsed the view of the Royal Commission. As the other parts of the Bill carry out the reforms in the practice affecting real property and conveyancing, which were advocated by that Commission and that Committee, so Part X carries out their proposals in regard to the Land Transfer Acts.

COMPARISONS OF SYSTEMS FACILITATED BY POSTPONEMENT OF COMPULSORY REGISTRATION OF TITLE.

When the new practice under the first nine parts of the Bill is in force, and all the amendments in the tenth part, including the Sixteenth Schedule, have been effected, the public, both lay and expert, will have a real opportunity of judging how the simplified system of conveyancing without registration compares in working with the improved system of land transfer by registration. Expert opinion is to-day sharply divided, as we know, upon the comparative advantages and disadvantages of the two methods. The public is, of course, only concerned to get the system which is alike safer, cheaper, and more efficient, and

(*n*) Now Lord Chancellor.

without experience the final judgment must remain to some extent a matter of opinion. The Bill does not take sides in the controversy. It begs no question, but leaves the better of the two systems to prove its superiority. Hon. Members may ask how. I answer by saying that, whilst the Bill treats the extension of compulsory registration as a national rather than a local matter, it provides that there shall be no such extension till the Bill has been in operation for ten years; and the Bill has not to come into operation till 1924, so that is twelve years from now; and then it imposes important precautions.

The Lord Chancellor at that date must give six months' previous notice of any draft Order by which he proposes to extend it to a new county area. The Order can only apply to one county or part of a county, and on notice being given either the county council or the local law society may demand a public inquiry to be held judicially by some practising barrister or solicitor, to be appointed by the Lord Chancellor for the purpose—an independent person—whose report will be published, and that report has to state fully his findings and his reasons. If his report should be in favour of an extension, the Lord Chancellor then will have to lay the draft Order on the Table of each House of Parliament, but it will not take effect unless each House separately passes a Resolution asking that it should be put in force. Under this scheme—a ten years' trial, with these seven careful precautions at the end of the ten years—I submit that expert opinion will thus have the opportunity of really forming an opinion by actual experience. At the end of the ten years opinion should have ranged itself definitely on one side or the other; but if at that comparatively distant date there should survive doubt as to which is the better system, the provisions of the Bill for a public inquiry will enable those, who desire to resist any extension of compulsory registration, ample opportunity for making good their arguments. At that distant day, each House will, no doubt, if the practice remains as it is now, be fully briefed by the partisans of the opposing views. Indeed, each House might, if it chose, appoint a Select Committee to hear evidence and report as to the working of the system or systems during the ten years. It is plain that the present day opponents of registration have won for themselves a strategic position of

great security, protected by ample safeguards. I would remind the House that the test period of the Bill was originally only two years, and was extended to ten years because the Law Society said, that if it were, they would be satisfied. It is not for me to predict which school will eventually prove to be right. I understand that each school is confident of its ultimate success. Be that as it may, I think I can assert without qualification that the principle of the Bill is a fair field and no favour to either side in its ten years' race for victory. I therefore confidently ask both parties to the controversy to support me in the Bill.

I have been long in explaining the Bill, but I can say in self-defence that I have not been as long as the Bill. I have observed from the OFFICIAL REPORT that most Second Reading speeches are longer than the Bill they introduce. By the indulgence of the House I would like to say a few words of the history of this really epoch-making Measure, because that history is material to the judgment of the House on the Bill. A series of great conveyancers of Lincoln's Inn, on instructions from the Law Society, have drafted various Bills, the main provisions of which now find a place within this Bill. They began with one, in 1895, drafted by the late Mr. Wolstenholme, that great conveyancer, and Mr. Cherry (*o*), the distinguished, though unofficial draftsman, who is mainly responsible for the present Bill, to whom Parliament and the nation owe a great debt for the skill he has shown in his draftsmanship and the devotion he has given to his task. That first Bill dealt with the subject-matter of Part I. of the present Bill, namely, the assimilation of real property law to personal property law. It was followed by draft Bills dealing with Settled Land, Conveyancing, Trustees and Personal Representatives similarly prepared. Then came Lord St. Aldwyn's Royal Commission, followed by two very large Bills subsequently amalgamated into one, and introduced by Lord Haldane into the House of Lords just before the War. Next came my own Committee, which included four equity counsel of great skill and experience, and three equally skilled and experienced solicitors, one of whom was the hon. Member for South Leeds (Sir William Middlebrook). In the earlier stages we had an hon. Member

(*o*) Now Sir Benjamin Cherry.

representing the Labour party, the hon. Member for the Ormskirk Division of Lancashire (Mr. Bell), who was not able, unfortunately, to continue to the end of our labours. Lastly, we had the most valuable services of the late Mr. Wilson-Fox, whose premature death deprived this House and his many friends of a character full of human sympathy, and a mind full of wisdom and shrewd common sense.

A criticism has been made to me of the present Bill that it would have been better to introduce separately the various Bills amalgamated in this Bill. My Committee discussed that question with Mr. Cherry (*p*) who was then assisting us, and we came unanimously to the view that the various parts of the Bill were so interwoven that they truly constituted one whole and could not be separated. We accordingly decided not to make several bites at the cherry, so we asked that distinguished draftsman to draft the forerunner of the present Bill for our consideration, and in 1920 the present Lord Chancellor introduced it in the House of Lords. After a Second Reading in the House of Lords it was referred to a Joint Select Committee of the two Houses. This House was represented by the hon. and gallant Member for Durham (Major Hills) who knows more about the subject than anyone else in this House; by the hon. and learned Member for Rushcliffe (Mr. Betterton) who was a distinguished member of the Chancery Bar until he left it to devote his time entirely to public work; also by the hon. Member for Seaham (Mr. Hayward), and by the hon. Member for the Ogmore Division (Mr. Hartshorn), who have both been of the greatest help.

That Joint Committee sat for months, and amended the Bill with very great care. On its being committed in the House of Lords criticism was directed particularly to Part I. by Lord Cave and others on the ground that the scheme required still further scrutiny. The Lord Chancellor (*q*), in order to make sure that time was given for mature consideration and discussion, allowed the Bill to stand over until the following year. During the interval a vast number of persons and bodies interested were consulted, with the result that when the Bill was again introduced by the Lord Chancellor (*q*) last year the principles of the

---

(*p*) Sir Benjamin Cherry.

(*q*) Lord Birkenhead.

Bill had been practically agreed. It passed through its various stages in another place, but arrived in this House too late in the Session for it to be dealt with. Since last year further consultations have taken place, and still further improvements have been effected, with the result that the Bill has this Session passed through the other House in exactly the same form, the same words and language, as when it was read a First time. The nation owes a great debt of gratitude to the Lord Chancellor (*q*) for his extraordinary skill, knowledge and tact in bringing the Bill to this stage. As a result of his work I am now in a position to state to the House that the Law Society, the Association of Provincial Law Societies, and I believe with only two exceptions every local Law Society, the Land Union, the County Councils' Association, the Association of Municipal Corporations, and I think practically every body of persons interested have intimated their satisfaction with the Bill as it now stands, without prejudice, of course, to quite minor points that may be raised. Nothing of any importance was suggested in the other House this Session.

My own profession, the Bar, I have put last, because we are always suspect, particularly when we pose as law reformers; but in advocating the simplification of our land laws, the many distinguished conveyancing counsel who have helped us, in particular Mr. Cherry (*p*), Mr. Benn—who is well represented by his brother in this House—and Mr. A. E. Russell, who have taken so leading and so honourable a part, surely may be acquitted, even though they are barristers, of self-seeking. They live by that very complication which they have thus helped to simplify. Are they not, as Mr. Underhill (*r*) the senior conveyancer to the Court, has written

> "rather like the eminent specialist on children's complaints, who, being asked by an anxious mother whether he objected to childrens' parties replied, with ingenuous candour: 'object to them, Madam? Why, I live by them.'"

The conveyancers are truly unselfish. By the removal of technical pitfalls much of their existing work will be abolished.

(*p*) Sir Benjamin Cherry.
(*q*) Lord Birkenhead.
(*r*) Now Sir Arthur Underhill.

May I, in connection with conveyancers and equity lawyers, refer to the late Mr. Justice Peterson, whose recent and untimely death we all regret? He devoted months of his vacations to the close study of this Bill in order to help the conveyancing counsel who were responsible for its drafting, and we are greatly indebted to him.

I hope the House will share my view that for so vast a Bill such a consensus of expert opinion in its favour is truly remarkable. At the same time, I would not be understood as attempting in any way to fetter the free judgment of the House. I only submit this striking measure of support from outside as an important factor in the case where a technical Bill is in issue. I recognise that the House is the final judge of all proposed legislation, but I am sure that hon. Members will agree with me that the Bill, being of necessity highly technical, an amendment of one Clause may upset the balance of many, and that after so long a process of extraordinarily careful examination and improvement we should be very careful in proposing further Amendments. I remember a sentence of one of our greatest lawyers, Lord Macnaghten, in connection with one of our best drawn Acts of Parliament, the Succession Duty Act:

> "In many ways the Succession Duty Act, 1853, is a remarkable piece of legislation. Drawn with consummate skill it avoids all technical expressions, and yet there is not a single word misused or out of place, nor any expression which it would be easy to improve. The Act was fortunate in its passage through Parliament. It was not mangled or marred or amended. The result is that it is consistent throughout, and as clear as the nature of the subject and the novelty of treatment which it required would permit."

This Bill, too, is drawn with consummate skill. Up to now practically every single one of the Amendments made between its first introduction in 1920 and its introduction this year—and they have been many—has been drafted by the expert draftsmen of the Bill, and as of the Succession Duty Act, I believe it is possible to say of this Bill that it is consistent throughout. I ask for the co-operation of hon. Members in the task of preserving its clear and consistent drafts-

manship. The less it is amended the less fear will there be of creating ambiguities and inconsistencies, those twin fountains of litigation. A few minor Amendments have been suggested to me, which I shall table in due course. May I ask any hon. Members who have Amendments to propose to be so good as to table them at the earliest possible moment? Some might have preferred to have the Bill committed to a Committee of the Whole House, but time forbids, and we have to go upstairs. The Government is anxious to get the Bill through Committee as rapidly as is consistent with what is right, and the services of myself and Mr. Cherry (*s*) will be at the disposal of any hon. Member who cares to discuss any question that has occurred to him, or any proposed Amendment, both unofficially outside the Committee as well as in the Committee itself. In these times of financial stress the country cannot afford to lose the immense saving in unnecessary labour and costs which will result from this Bill.

(*s*) Sir Benjamin Cherry.

A Compendium

OF

PRECEDENTS OF PLEADING,

COMMON LAW

and

CHANCERY

BY

BERTRAM B. BENAS, and R. C. ESSENHIGH,

of the Middle Temple, *of Gray's Inn,*

Both of the Northern Circuit, Barristers-at-Law.

Price **£1 10s.** *net.*

"The aim of the writers is to supply some of the forms of pleadings in every important kind of action . . . The present volume is both practical and useful."—*Law Times.*

"In addition to many precedents of pleadings in common law actions we are supplied with a varied collection of Chancery pleadings which cannot but be helpful to the equity draftsman. The book will come as a boon and a blessing to practitioners who have to deal with Court work."—*The Conveyancer.*

LONDON:

SWEET AND MAXWELL, LIMITED,

2 & 3 CHANCERY LANE, W.C. 2

Printed in Great Britain by The Eastern Press, Ltd., Reading.

MIDDLE TEMPLE
LIBRARY